

1 Continental, a cable company called
2 Continental.

3 JUDGE SIPPEL: That has nothing to
4 do with Mojo?

5 THE WITNESS: No. No, it didn't.

6 JUDGE SIPPEL: But the same idea
7 in the sense that they were basically three
8 joint participants?

9 THE WITNESS: Yes, you're exactly
10 right. Those three cable companies, Cox,
11 Comcast, and Continental formed a joint
12 venture and they launched OLN and Speed
13 Channel.

14 JUDGE SIPPEL: In what year about
15 was that?

16 THE WITNESS: In '95.

17 JUDGE SIPPEL: Thank you.

18 BY MR. CARROLL:

19 Q And then TCI was not part of the
20 ownership of either Golf or Versus, OLN back
21 at that time, correct?

22 A No.

1 Q And so from your perspective, when
2 you were looking to acquire the programming,
3 they were an outside programmer, unaffiliated
4 with you for purposes of negotiations with
5 them, right?

6 A Yes.

7 Q And did you decide to carry those
8 channels, Golf and OLN?

9 A At the time of the first deal that
10 was done just as a point of clarification, I
11 worked at TCI. I was not running the
12 department at that time. It was being run by
13 my boss at the time, Jedd Palmer.

14 Q Okay.

15 A But I was in the department when
16 it was done and Jedd had made the decision to
17 carry those networks.

18 Q And the decision to carry the
19 networks, since the sports tier doesn't exist
20 back then, I gather they were not distributed
21 on a sports tier?

22 A That's correct.

1 Q How were those channels
2 distributed over the time period, the mid-'90s
3 to the late '90s? What was the distribution
4 like for Golf and for OLN?

5 A The distribution, my recollection
6 was the distribution started a mixture of
7 digital and analog. It increased over time.
8 There were launch support payments that those
9 networks offered that increased the
10 distribution.

11 Q Now let me follow up on that term,
12 launch support payments. Could you explain to
13 His Honor what is a launch support -- first,
14 is that a term of art in the industry? And
15 secondly, what does that mean?

16 A It is a term of art in the
17 industry. What it refers to is an upfront
18 payment that would be paid by a network in
19 order to entice the distributor to enter into
20 a distribution commitment for a network.

21 Q And what's the concept behind it?
22 What does that happen in the industry with

1 networks and under what types of circumstances
2 do you see that happening?

3 A Well, it was much more common in
4 the 1990s. It really isn't part of the
5 landscape in today's environment, but in the
6 '90s, it was very common for networks, many of
7 the networks on that list that I gave you
8 gained distribution in the '90s by offering
9 launch support to distributors. And so if a
10 distributor was inclined to distribute a
11 network, a launch support could just entice a
12 distributor to actually make a deal and give
13 a distribution commitment.

14 Q What effect would the launch
15 support have on the cost to the distributor of
16 distributing the program?

17 A It would reduce the cost.

18 Q So it would make it cheaper, less
19 expensive for the distributor to distribute
20 the channel?

21 A That's correct.

22 Q And by the end of the '90s, you're

1 still at TCI, I think, right?

2 A That's correct.

3 Q And what level of distribution did
4 Golf Channel and OLN enjoy by the end of the
5 '90s, do you remember?

6 A It was pretty broadly distributed.

7 Q And by the end of the '90s, Tennis
8 Channel still doesn't exist, correct?

9 A Yes. It does not exist.

10 Q So the sports tier, I want to come
11 back to that again. When, in time, does the
12 sports tier come along? When do you first
13 start seeing it?

14 A Time Warner was really the leader
15 in creating a sports tier, creating the idea
16 of the sports tier. And this was in the mid-
17 2000s.

18 Q And do you remember how that
19 happened, how you learned about it and what
20 type of company Time Warner was using for its
21 sports tier?

22 A It was -- I'm not sure how I first

1 learned about it. It was probably something
2 that became talked about in the press. I
3 think actually, one of the first deals I
4 remember reading about the sports tier was the
5 deal that Time Warner had done with Tennis
6 Channel wherein Time Warner committed to put
7 Tennis Channel on the sports tier that they
8 were creating.

9 Q Do you remember what year that
10 was?

11 A That would have been in '03-'04
12 time frame?

13 Q Okay.

14 MR. CARROLL: Your Honor, may I
15 approach?

16 JUDGE SIPPEL: Yes, sir.

17 MR. CARROLL: Your Honor, you
18 might remember the white book that I used in
19 the opening arguments.

20 JUDGE SIPPEL: I kept that with
21 me. Is that okay?

22 (Laughter.)

1 MR. CARROLL: That's what I was
2 hoping.

3 JUDGE SIPPEL: I've got it right
4 here.

5 MR. CARROLL: I just wanted to
6 direct the witness to the time line that is at
7 Tab A which is marked as Comcast Exhibit 658.

8 JUDGE SIPPEL: I kept it out.

9 MR. CARROLL: Perfect. You're
10 ahead of me.

11 JUDGE SIPPEL: No, I'm not. I'm
12 just trying to catch up with you.

13 BY MR. CARROLL:

14 Q I just wanted to show you behind
15 Tab A in your book, you can fold out the time
16 line. It's Commission Exhibit 658.

17 A Yes, I see.

18 Q I just wanted to look at the -- we
19 just talked about the period of the '90s and
20 I just wanted you to confirm. Does the time
21 line as set forth there, the red years from
22 '95 through '02 and then the notation for 2003

1 with Time Warner launching the Tennis Channel,
2 does that look correct to you, that time line?

3 A It does.

4 Q Is it correct that the years I've
5 got in red, those are all years when Golf and
6 Versus, the predecessor to Versus, OLN, were
7 in existence of being distributed and Tennis
8 Channel didn't exist yet, is that correct?

9 A Yes, sir.

10 Q And then the first blue year we've
11 got there, 2003, is that when you first
12 learned about the sports tier that Time Warner
13 is creating?

14 A Yes.

15 Q You can put that to the side.

16 JUDGE SIPPEL: I'm sorry, was the
17 selection of the blue in 2003, was that for
18 purposes of just setting out this Tennis
19 Channel, The Tennis Channel launch as being
20 kind of a breakpoint or a -- what's the term
21 I'm trying to think of? Things changed. Let
22 me ask you the question this way. What were

1 you trying to show by switching from red to
2 blue in '03?

3 MR. CARROLL: Because we've got a
4 period of years when Golf and Versus exist and
5 Tennis Channel hasn't been born yet. So the
6 red years are all the years that Golf and
7 Versus, which was at the time called OLN,
8 they've been launched. They're in
9 distribution. They're gaining distribution in
10 the marketplace and it was to illustrate that
11 in all those years we don't have Tennis
12 Channel yet until we get to 2003 and then the
13 rest of the time line, all those years is when
14 Tennis Channel is in existence.

15 JUDGE SIPPEL: Right up to the
16 present?

17 MR. CARROLL: Right up to the
18 present.

19 JUDGE SIPPEL: Okay, thank you.

20 MR. CARROLL: Thank you, Your
21 Honor.

22 BY MR. CARROLL:

1 Q So let's move forward in time
2 then, Mr. Bond, if we could. So what do you
3 do -- in 2003, you are now at Comcast?

4 A That's correct.

5 Q And what do you do when you hear
6 about the sports tier that Time Warner has
7 created?

8 A There was a lot of discussion
9 inside Comcast whether Comcast should create
10 a sports tier as others, Time Warner and Cox,
11 had seemed to be doing. And over a period of
12 some months and examination it was determined
13 that we would try to move forward with
14 launching a sports tier on our own.

15 Q And why was that? What were the
16 advantages that you saw as a cable distributor
17 to having a sports tier?

18 A Well, one of the challenges that
19 exists in the business, in the cable business
20 is continually adding product to existing
21 tiers which add costs, but don't really add
22 any subscribers. So there's -- and there's

1 really no associated revenue coming with that
2 in channels. So it really becomes simply a
3 cost and it reduces the profitability of the
4 company to add incremental programming.

5 So by creating a sports tier, that
6 had the advantage of tying new revenue to the
7 cost. So if we created a sports tier and
8 charged say \$5 for it, but we then put
9 programming on it that cost in aggregate say
10 \$2, we would actually make -- the programmers
11 would make \$2 and we would make \$3 or \$2.50
12 and \$2.50 or whatever the split would be
13 there.

14 So the advantage of launching the
15 sports tier was it created a new revenue
16 opportunity for the cable company that was
17 tied to the cost. So it was a way in which we
18 could generate revenue for the cable company
19 and generate revenue for the programmers.

20 Alternatively, if you simply
21 launched programming on an existing broadly-
22 based tier, it ended up increasing costs,

1 increasing programming costs, so it created
2 revenue for the programmer, for the network,
3 but it didn't create any associated revenue
4 for the cable company. So there was a
5 mismatch in adding programming to existing
6 tiers. So the sports tier was an idea that
7 allowed us to create incremental revenue
8 together with the associated incremental cost.
9 So there was revenue for both parties.

10 JUDGE SIPPEL: Can I follow up on
11 that?

12 MR. CARROLL: Yes, please.

13 JUDGE SIPPEL: Did it ever happen
14 in terms of putting the programming on the
15 sports tier, constituting the programming on
16 the sports tier, or your explanation of
17 business reasons why, was it ever a part of
18 the agreement, the carriage agreement, that if
19 certain things happened similar to a baseball
20 player's contract, if you do this, this, this,
21 and this, then this will happen? Was there
22 any kind of conditions laid out that if you do

1 this and you -- if your program becomes so
2 popular, then you have a right or you have the
3 option or we have the option of bringing you
4 down to a broader tier?

5 THE WITNESS: I don't think I've
6 ever done a deal in my professional career
7 that was structured in that way. The deals,
8 how they would typically be structured, is the
9 deals would establish a certain minimum
10 distribution requirement, and that would vary
11 from service to service. And any additional
12 distribution on top of that was purely at the
13 option of the distributor. So that was the
14 typical structure for an affiliation
15 agreement.

16 I don't think I've ever done a
17 deal that had triggers in it that required
18 further distribution based on performance.
19 All the deals that we've done really fit into
20 that mold that I just described, minimum
21 distribution obligation, whatever it is and
22 that varied quite widely, depending on the

1 network with distribution above that purely
2 option at the distributor's option.

3 JUDGE SIPPEL: That's why you're
4 sitting there and I'm sitting here.

5 (Laughter.)

6 JUDGE SIPPEL: I might not be too
7 good at what you do. But this is interesting
8 to me anyway. All right, so it was never
9 reduced to writing and that's understandable.
10 I was expecting the answer you gave. Is that
11 ever conceivably an incentive for a new
12 network or a new programmer coming on line and
13 saying I have this great, great idea. We'll
14 take you now, but we can only push you up
15 there because we really don't know what we're
16 getting and then you had all the explanations
17 as to the expense, the cost, and all this
18 stuff. The deal is going to work good for
19 you, but not for us. All of a sudden it
20 dawned on us, these folks have a good deal.
21 If they go through the -- when the contract
22 expires, the distribution expires, they can

1 always sell their wares someplace else,
2 correct?

3 THE WITNESS: That's correct.
4 That's correct.

5 JUDGE SIPPEL: Has that ever
6 happened?

7 THE WITNESS: Typically, what
8 would happen is you would do a deal with a
9 network and it would require a certain
10 distribution. And I would say in many cases,
11 distributors would tend to over deliver on
12 that to some extent. There would always be
13 instances where certain systems would want to
14 distribute differently or they would
15 distribute beyond the commitment. And that's
16 happened, for instance, in The Tennis Channel
17 case. We very significantly over delivered on
18 that commitment. Since The Tennis Channel
19 required no distribution at all, we actually
20 launched very broadly. So in that case, we
21 had seen the value of it to put on the sports
22 tier, so we launched it very broadly.

1 Now when a renewal -- you
2 mentioned renewals, when renewal opportunities
3 come up, that is oftentimes an opportunity to
4 relook at packaging. And in my experience,
5 renewal times are opportunities where
6 distribution might be increased.

7 JUDGE SIPPEL: So it's a
8 possibility?

9 THE WITNESS: Absolutely. And it
10 happens very often.

11 JUDGE SIPPEL: Now it happens very
12 often, under my scenario, it would be
13 increasing the distribution and at some point
14 it's going to -- if you increase it enough,
15 you're going to have to drop the programmer
16 down to a lower tier and then we get into that
17 cost-benefit analysis.

18 THE WITNESS: Exactly.

19 JUDGE SIPPEL: Has it ever been
20 worthwhile to a carrier that you have -- a
21 distributor that you have been with,
22 worthwhile to bring one of these programs at

1 renewal time down into a broader distributor
2 tier?

3 THE WITNESS: Yes. What will
4 happen in those instances --

5 JUDGE SIPPEL: Am I clear with my
6 question?

7 THE WITNESS: Yes, you're
8 absolutely clear. What will happen in those
9 instances, if you're in a renewal discussion
10 with the programmer, now you're in a situation
11 where the programmer will say if you want to
12 continue to have my programming, I would like
13 more distribution. And if you don't do a deal
14 with me, you will not continue to have access
15 to the network.

16 So if the network is appealing and
17 strong, it may be able to then on renewal gain
18 incremental distribution.

19 JUDGE SIPPEL: I'm saying in your
20 experience, has that ever happened where
21 you've been convinced by the programmer, that
22 he's got a good argument? You don't want to

1 lose the programmer, so you accede to his,
2 her, whatever wishes, and you drop it down to
3 another tier with broader distribution. Have
4 you ever done that?

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: Can I ask you with
7 what? Do we have to close the door for this?
8 Is this super secret?

9 MR. PHILLIPS: I don't think so,
10 Your Honor.

11 JUDGE SIPPEL: Can you name what
12 the network was?

13 THE WITNESS: It would be many of
14 them. History Channel, ESPN, many of the ones
15 I mentioned. NBA TV was a situation like
16 that.

17 JUDGE SIPPEL: And were they
18 independents?

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: And I say
21 independents, they were not part of an
22 integrated cable company?

1 THE WITNESS: Yes, that's correct.

2 JUDGE SIPPEL: I'm correct?

3 THE WITNESS: Yes, you're correct.

4 Yes.

5 JUDGE SIPPEL: All right.

6 BY MR. CARROLL:

7 Q Let me follow up on that and talk
8 about the distribution implications of an
9 affiliation agreement. If you're out of
10 contract, the contract is about to expire,
11 does the programmer gain more leverage then
12 because the programmer can say to you, if you
13 don't agree to my terms, you won't have my
14 programming any more?

15 A That's correct.

16 Q Okay. So is an advantage to you
17 as the cable company to have the programmer
18 under a contract where that leverage doesn't
19 exist?

20 A That's correct.

21 Q And help us understand the
22 implications of the sports tier on

1 distribution. Does the sports tier make it
2 easier or more difficult to get distribution,
3 for a programmer to get distribution? And
4 explain your answer.

5 A Well, I think the sports tier made
6 it easier for networks to get distribution
7 because otherwise the pattern of behavior that
8 I described a moment ago existed. You had a
9 lot of launches happening in the 1980s when
10 cable was first getting started. You had a
11 lot of launches happening in the 1990s.
12 Towards the end of the 1990s, you had a
13 pattern of launch support being paid.

14 So things were getting tighter at
15 the end of the '90s and then in 2000 and on,
16 really, the launch of new networks really
17 decelerated. And that was happening because
18 of what I described earlier. You had these
19 big packages of product. You had literally
20 hundreds of networks that a cable company was
21 carrying. Adding one more network to a big
22 package was not going to help you gain

1 subscribers necessarily. It was just going to
2 increase your cost.

3 So the sports tier was an
4 opportunity to create a new revenue stream.
5 And so that made it easier to get deals with
6 new networks that fit within the context of
7 that tier because now you had a new business
8 model. Now you had a new product that you
9 were selling that you wanted to get product
10 for because there was an associated revenue
11 stream with it.

12 JUDGE SIPPEL: So I look up that,
13 this is my terminology -- where's my notes?
14 Launch support payments. That should get a
15 spot in the glossary. Launch support -- that
16 is a beautiful phrase of art. And there was
17 no further business reason to even entertain
18 that. Of course, this was from the side now
19 of the programmer. The programmer -- once the
20 programmer is given an opportunity go up to a
21 sports tier, then there's no incentive to pay
22 those launch support payments. Is that

1 correct? Because he's going to get up there.

2 THE WITNESS: On the sports tier,
3 yes.

4 JUDGE SIPPEL: You put him up
5 there and he doesn't have to go into that --
6 I would call it a -- in a contract, I would
7 just call it a sweetener. You're trying to
8 negotiate a contract, well, okay, well, we
9 agree on something, that's good. We agree on
10 a lot of things. You see what I'm saying?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Now what was the
13 time frame that that was kind of a watershed
14 when that happened and I'm just trying to put
15 it in terms of what date --

16 THE WITNESS: This was really the
17 end of the millennium, frankly. When you got
18 into 2000s and beyond, you saw really not a
19 whole lot of networks being launched. There
20 were a few exceptions. There were new RNS,
21 Regional Sports Networks being launched, but
22 you really didn't see new basic networks being

1 launched at the rate that you saw in the '90s
2 and certainly at the '80s.

3 JUDGE SIPPEL: Now you tricked me
4 there. What's a basic network?

5 THE WITNESS: Basic as opposed to
6 a sports tier network.

7 JUDGE SIPPEL: I see. I gotcha.
8 Go ahead. I'm sorry.

9 THE WITNESS: Just to clarify,
10 when I was talking earlier about a network
11 like History Channel or ESPN2 or ESPN or A&E
12 or Golf and Versus, I considered those to be
13 basic networks. They were all launched in the
14 '80s and the '90s.

15 JUDGE SIPPEL: That's good for me
16 because that's how I was hearing it. I guess
17 maybe I should have asked you to make that
18 distinction then, but -- okay, we're on the
19 same wavelength.

20 MR. CARROLL: Shall I continue,
21 Your Honor?

22 JUDGE SIPPEL: Please, yes, please

1 do, unless somebody is hungry.

2 (Laughter.)

3 MR. CARROLL: Not that again.

4 JUDGE SIPPEL: Let's keep on.

5 BY MR. CARROLL:

6 Q So does there come a time after
7 you hear about Time Warner in the sports tier,
8 I think you explained that Comcast evaluates
9 it and they decide to start a sports tier. Is
10 that right?

11 A Yes.

12 Q And does there come a time when
13 you initiate dealings with The Tennis Channel?

14 A Yes.

15 Q Tell us about that. How does that
16 come to pass?

17 A They had obviously, they had
18 reached out to us, as well, as part of their
19 role as a network. They obviously reached out
20 to all the distributors, so they had reached
21 out to us and when we had determined we were
22 going to launch a sports tier and that was our

1 plan, I then started in earnest discussions
2 with them.

3 Q Now Time Warner, then Tennis
4 Channel reaches out to you and you have
5 discussions with them, is Time Warner already
6 carrying them?

7 A They had announced a deal. I
8 don't know if they were carrying them. I
9 don't remember exactly the date that Time
10 Warner had launched its sports tier, but they
11 had announced a deal. They had announced the
12 commitment.

13 Q Okay, and Time Warner's deal with
14 Tennis Channel is what year again?

15 A 2003.

16 Q Do you eventually do a deal with
17 Tennis Channel, you being Comcast?

18 A Yes.

19 Q And what year is that?

20 A 2005.

21 Q So do you still have your time
22 line in front of you, Exhibit 658?

1 A Yes.

2 Q That's in the white book. Unless
3 users have torn it out of the white book, but
4 Exhibit 658.

5 (Laughter.)

6 JUDGE SIPPEL: I'm going to have
7 to go up to the ethics officer and ask if I
8 can keep that with me.

9 (Laughter.)

10 Go ahead.

11 BY MR. CARROLL:

12 Q May 2003, we have Time Warner with
13 Tennis Channel on its sports tier, is that
14 right?

15 A Yes.

16 Q And then your contract, yours
17 being Comcast with Tennis Channel is in March
18 of 2005. Is that right?

19 A Yes.

20 Q Now what kind of contract do you
21 do with Tennis Channel?

22 A We do a deal with Tennis Channel